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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,737	10/02/2000	Curtis Cole	JBP525	3415

7590 03/12/2004

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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 03/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/677,737	Applicant(s) COLE ET AL.	
	Examiner Gina C. Yu	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,6 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6 and 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>23</u> . | 6) <input type="checkbox"/> Other: .. |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 24, 2003 has been entered. Claims 1-3, 5, 6, 9-15 are pending.

Claim Objections

Claims 1 and 11 are objected to because of the following informalities: the use of semicolon before "or" in claim 1, line 5 and after each item in claim 11, line 3. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 9-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Tokuyama et al. (EP 1090630 A1) ("Tokuyama").

Tokuyama discloses method of treating atopic dermatitis such as erythema by topically applying a composition comprising ethanolamine in cosmetically acceptable carriers. See abstract; par. 0234-0259; instant claims 1, 10, and 11. See par. 0006 which meets the formula

and the constituents of instant claims 1 and 11. Par. 0011 discloses 2-ethylaminoethanol, diethanolamine, diethanolamine, and 2-dimethylaminoethanol, and specific formulations comprising 1 % by weight of the ethanolamines are disclosed in Examples 13-16, among others. See par. 120-124; instant claims 1, 2, 3, 12, 13. The compositions also comprise paraben and ethanol, potentially skin-irritating materials. See instant claims 6. See par. 2 for instant claim 9.

2. Claims 1-3, 5 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Perricone (US 6365623 B1) ('623).

'623 patent teaches method of treating acne in inflammation phase by applying a composition comprising lipoic acid and most preferably adjunct ingredients such as 0.5 – 5 % by weight of methyl or ethyl-aminoalcohols or 0.05-% by weight of tyrosine. See col. 5, lines 30-53; col. 8, lines 41-61; col. 9, lines 16-22; instant claims 1, 4, 11, and 12. The patent specifically states, "one particularly efficacious embodiment of the invention contains lipoic acid, glycolic or lactic acid, and dimethylaminoalcohol; and another further contains tyrosine." See col. 9, lines 21-23. Examiner asserts that the claimed method is anticipated by the specific teaching here.

3. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Perricone (US 6319942 B1) ('942).

'942 teaches that the alkanolamines recited in the instant claims is useful in treating scars. See col. 3, line 7 - col. 4, line 8. The most preferred embodiment contains 3 % by weight dimethylaminoethanol and 5 % by weight of tyrosine. See col. 7, line 44 - col. 8, line 25. The reference teaches that the formation of scars undergo inflammatory stage, and that hypedrophic and keloid scars show inflammatory activity. See col. 2, lines 31-53. The reference also teaches teaches that compositions contain The reference also generally teaches that scars are associated

with itching, burning, stinging or painful sensations", resulted from trauma, burns, or disease.

See col. 1, line 5 - col. 2, line 9.

3. Claims 1, 2, and 10 are rejected under 35 U.S.C. 102 (a) and (e) as being anticipated by Ptchelintsev (US 5972993).

Ptchelintsev discloses a topical composition comprising 0.5% by weight of triethanolamine, useful in treating rosacea. See col. 10, lines 33-66. The method of using the topical composition is inherently practiced by topically applying the prior art composition to treat rosacea, which associated with erythema.

Response to Arguments

Applicant's arguments filed October 1, 2003 have been fully considered but they are not persuasive.

In response to applicants' argument '623 patent fails to teach using dimethylaminoethanol and tyrosine to ameliorate redness or inflammation, Examiner views that the instant invention reads on the prior art because examiner views that the prior art treatment of acne overlaps with the presently claimed method of ameliorating redness (or inflammation). While applicants assert that the prior art is limited to treating acne, examiner notes that redness and inflammation is a symptom of acne, and the application of the prior art to treat acne inherently performs the present method.

In response to applicants' argument that '942 patent is limited to scar treatment, examiner respectfully disagrees with the applicants' position that the reference fails to teach or suggest ameliorating redness or inflammation because the reference clearly teaches that scars undergo inflammation stage. Topically treating the scar as disclosed by the '942 patent would inherently

treat inflammation. In response to applicants' remarks that the examples do not contain triethanolamine, examiner reiterates that the rejection is made based on the specific teaching in the reference that the most preferred embodiment contains diethanolamine and tyrosine. See col. 7, line 44- col.8, line 25.

Applicants further argues that the examiner misinterpreted the teaching of Pitchelintsev (US 5972993). Examiner respectfully disagrees, and reminds applicants that the Office policy is to interpret the scope of the claims as broadly as possible. Claim 1 recites a method of ameliorating redness or inflammation by topically applying a composition comprising an alkylamino alcohol. The claim reads on the prior art which teaches to use a topical composition comprising triethanolamine for the claimed purposes.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-0635. The examiner can normally be reached on Monday through Friday, from 8:30 AM until 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina Yu
Patent Examiner


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

2/9/04